

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**EAST BRONX NAACP CHILD
DEVELOPMENT CENTER, INC.**

and

Case No. 2-CA-38622

DISTRICT COUNCIL 1707, AFSCME

*Jamie Rucker, Esq., New York, NY, Counsel for the General Counsel.
Harvey S. Mars, LLC, New York, NY, for the Charging Party.*

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on January 24, 2008¹ by District Council 1707, AFSCME (Union) a complaint was issued on March 13 against East Bronx NAACP Child Development Center, Inc. (Respondent). On May 28, a hearing was held before me in New York, NY.

The complaint alleges essentially that the Respondent failed and refused to bargain with the Union as the exclusive collective-bargaining representative of its unit employees, and also delayed paying unit employees their wages in violation of Section 8(a)(1) and (5) of the Act.

On March 13, the Regional Office sent the complaint to the wrong address, 113 Colgate Avenue instead of to 1113 Colgate Avenue. This error was corrected on March 27 when the charge was mailed by first class mail. It was not returned to the Regional Office as undelivered. On the same date the complaint were sent to the correct address by certified mail, return receipt requested. Postal records in evidence show that the U.S. Postal Service notified the Respondent on March 29 that this mail was available at the Post Office, and that as of April 15 it was not claimed by the addressee. Subsequently the envelope bearing the complaint was returned to the Regional Office.

Section 102.20 of the Board's Rules and Regulations provides that the Respondent must file an answer to the complaint within 14 days from the service of the complaint, and that if it fails to do so, all the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board. The complaint repeated the language set forth in Section 102.20, and stated that the Respondent was required to file an answer on or before March 27, 2008, and that, if no answer was filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

No answer to the complaint was received, and on April 14, counsel for the General Counsel sent a letter by first-class mail to the Respondent at its correct address advising it of its failure to file an answer. The letter informed the Respondent that the time to file an answer was voluntarily extended to April 21, and that if no answer was received he would seek a default

¹ All dates hereafter are in 2008 except as otherwise stated.

judgment or move for summary judgment at the April 28 hearing. The letter advised that all allegations in the complaint not specifically denied or explained in any answer that was filed shall be deemed to be admitted to be true and shall be so found by the Board. The letter was not returned to the Regional Office as undelivered. No answer was received thereafter.

At the hearing, the counsel for the General Counsel made a Motion for Default Judgment based on the Respondent's failure to file an answer. The Respondent made no appearance at the hearing. In view of the Respondent's failure to file an answer, I granted the Motion. In addition, counsel for the Charging Party stated at the hearing that a federal mediator told him that the Respondent advised the mediator that it was "not willing to continue negotiations or to seek conciliation." This demonstrates that the Respondent has had no interest in contesting this matter or in meeting its obligation to bargain in good faith with the Union.

Based upon the fact that no answer having been filed denying any of the allegations of the complaint, all such allegations are deemed to be admitted to be true. Upon the evidence presented in this proceeding, I make the following:

Findings of Fact

I. Jurisdiction

The complaint alleges and I find that the Respondent, a New York not-for-profit corporation having its office and place of business at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, has been engaged in the business of providing child care. During the past year, the Respondent purchased and received at its facilities goods and materials valued in excess of \$5,000 directly from points outside New York State, and during that same period of time has derived gross revenues in excess of \$250,000 from the conduct of its operations. I accordingly find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Certification

On June 21, 2007, the Union was certified as the exclusive collective-bargaining representative of the employees in the following appropriate collective-bargaining unit:

All full-time and regular part-time employees, including social workers, teachers, special education teachers, universal pre-k coordinators, assistant teachers, service coordinators, clerical staff/secretaries, cooks, assistant cooks, and custodians employed by Respondent at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, and excluding all other employees, including confidential employees, and guards and supervisors as defined in the Act.

At all times since June 21, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the above unit.

B. The Refusal to Bargain

On or about June 26, 2007, November 13, 2007, and December 17, 2007, the Union, by its counsel Harvey S. Mars, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment and other terms and conditions of employment.

Since on or about December 12, 2007, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit.

C. The Delay in Paying Wages

On or about December 12, 2007, the Respondent delayed paying unit employees their wages. The subject of timely payment of wages relates too wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective-bargaining.

The Respondent engaged in such conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

Conclusions of Law

By failing and refusing on and after February 13, 2006, to bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

By delaying the payment of wages to its unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, such timely payment of wages being a mandatory subject of bargaining, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

The Respondent, by the acts and conduct described above, has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, I shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, I shall, as requested in the complaint, construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 222, 229 (1962), *enfd.* 328 F. 2d 600 (5th Cir. 1064), *cert. denied* 379 U.S. 81 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusions of law and on the entire record, I issue the

following recommended²

ORDER

5 The Respondent, East Bronx NAACP Child Development Center, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

10 (a) Refusing to bargain collectively with District Council 1707, AFSCME as the exclusive collective-bargaining representative of the employees in the following appropriate collective-bargaining unit.

15 All full-time and regular part-time employees, including social workers, teachers, special education teachers, universal pre-k coordinators, assistant teachers, service coordinators, clerical staff/secretaries, cooks, assistant cooks, and custodians employed by Respondent at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, and excluding all other employees, including confidential employees, and guards and supervisors as defined in the Act.

20 (b) Delaying paying unit employees their wages.

25 (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

30 2. Take the following affirmative action necessary to effectuate the policies of the Act.

35 (a) On request, bargain collectively with District Council 1707, AFSCME as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The initial period of the certification shall be construed as beginning on the date the Respondent begins to bargain in good faith with the Union:

40 All full-time and regular part-time employees, including social workers, teachers, special education teachers, universal pre-k coordinators, assistant teachers, service coordinators, clerical staff/secretaries, cooks, assistant cooks, and custodians employed by Respondent at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, and excluding all other employees, including confidential employees, and guards and supervisors as defined in the Act.

50 ² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make timely payments of wages to its employees.

(c) Within 14 days after service by the Region, post at its facilities in the Bronx, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 13, 2006.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 8, 2008

Steven Davis
Administrative Law Judge

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX
NOTICE TO EMPLOYEES**

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT refuse to bargain collectively with District Council 1707, AFSCME as your exclusive collective-bargaining representative in the following appropriate collective-bargaining unit.

All full-time and regular part-time employees, including social workers, teachers, special education teachers, universal pre-k coordinators, assistant teachers, service coordinators, clerical staff/secretaries, cooks, assistant cooks, and custodians employed by Respondent at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, and excluding all other employees, including confidential employees, and guards and supervisors as defined in the Act.

WE WILL NOT delay paying you your wages.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL on request, bargain collectively with District Council 1707, AFSCME as your exclusive representative in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees, including social workers, teachers, special education teachers, universal pre-k coordinators, assistant teachers, service coordinators, clerical staff/secretaries, cooks, assistant cooks, and custodians employed by Respondent at 1113 Colgate Avenue, Bronx, New York; 67 Metropolitan Oval, Bronx, New York; and 1891 McGraw Avenue, Bronx, New York, and excluding all other employees, including confidential employees, and guards and supervisors as defined in the Act.

WE WILL pay your wages on a timely basis.

EAST BRONX NAACP CHILD DEVELOPMENT CENTER, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

26 Federal Plaza, Federal Building, Room 3614
New York, New York 10278-0104
Hours: 8:45 a.m. to 5:15 p.m.
212-264-0300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0346.